

CONTRACT
BY AND BETWEEN THE
CITY OF LAKEWOOD, OHIO
AND

Dr. Edward J. Walter & Associates, Inc.

Professional Engineering Vibration Monitoring Services
High Rate Treatment Facility –
Wastewater Treatment Plant Improvements Project

THIS CONTRACT made as of this 6th day of November, 2018 by and between the City of Lakewood, Ohio, a municipal corporation organized and existing pursuant to the Amended Charter and Ordinances of the City of Lakewood (hereinafter referred to as “City”), by authority of Ordinance No. 49-17A adopted and approved by the Lakewood City Council on November 5, 2018 and November 6, 2018 respectfully (a copy of which are attached hereto and made a part hereof as Exhibit “A”), and authorized by the Board of Control on November 5, 2018 (a copy of the authorization is attached hereto as Exhibit “B”) and Dr. Edward J. Walter & Associates, hereinafter referred to as “Dr. EJW”)

WHEREAS, the City is seeking consulting services for the implementation of the Professional Engineering Vibration Monitoring Services - High Rate Treatment Facility – Wastewater Treatment Plant Improvements Project, and;

WHEREAS, Dr. EJW pursuant to the City’s request for proposal and the submittal and presentation in response thereto, has been determined to be qualified, competent and the best candidate to provide the required outside professional services;

NOW, THEREFORE, it is agreed that the City shall and does hereby employ Dr. EJW to perform the work as hereinafter specified; and that, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed by and between the parties as follows:

Section 1. SCOPE OF SERVICES AND GENERAL CONDITIONS

Dr. EJW does hereby promise and agree to implement the Professional Engineering Vibration Monitoring Services - High Rate Treatment Facility – Wastewater Treatment Plant Improvements

Project, as described in Dr. EJW's Proposal of November 1, 2018 (a copy of which are attached hereto as Exhibit "C") and in the City's *verbal* request for proposal.

In performing the professional services described in this Contract, Dr. EJW will exercise the degree of care and skill ordinarily exercised by reputable companies performing the same or similar services in the same geographic area.

Section 2. REPRESENTATIVES

A. Dr. EJW shall designate and authorize **Mr. Kyle Varner, Field Services Manager** as agent for all purposes under this contract, and said agent shall be available at all times to the representatives of the City for the purpose of notification and consultation, and who shall be designated as the Project Manager having overall responsibility for all phases of Dr. EJW's participation in the project.

B. For purposes of this contract, the agent for the City and liaison officer with respect to the matters contained herein shall be the **Mark K. Papke, City Engineer** or such other person designated by the Mayor of the City.

Section 3. COMPENSATION

For performing the services referenced in Section 1 above, the City will pay and Dr. EJW will accept an amount not to exceed **Forty-Two Thousand, Four Hundred Dollars and no/xx (\$42,400.00)**. This amount shall include all direct costs, indirect costs, other direct costs, and profit. Said cost may not be exceeded without prior written authorization by the City.

Vehicle mileage incurred by consultant employees, while performing work for City projects, will be reimbursed at the U.S. General Services Administration rate that corresponds to the actual date of

travel. Mileage reimbursements will not be permitted for any travel outside the Lakewood city limits unless otherwise specifically authorized in writing.

Except as may otherwise be stipulated in a separate written agreement between the City and Dr. EJW, invoices shall be submitted no more frequently than monthly and all payments for the foregoing compensation shall be made no more frequently than thirty (30) days from date of approved invoice, and only upon sufficient invoice, detailing professional time, rates and direct and indirect costs in accordance with the City's ordinary purchase order and accounts payable system, and subject to a retainage of five (5) percent, to be held by the City until ninety (90) days after completion of all services.

Section 4. CONTRACT TERMINATION

In the event the City or Dr. EJW desires to terminate this Scope of Service Agreement, it may be terminated upon a thirty (30) day written notice by the party so desiring to terminate to the other party. Dr. EJW shall be paid for work completed and services performed up to the time of notice and in the event it is allowed to complete commenced projects shall be compensated at the rate provided for this Scope of Service.

Section 5. INSURANCE

A. **MINIMUM REQUIREMENTS:** Dr. EJW and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Dr. EJW, his agents, representatives, employees or subcontractors as described in the Insurance Requirements Checklist (attached hereto and incorporated herein as Exhibit E).

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City of Lakewood in no way warrants that the minimum limits contained herein are sufficient to protect Dr. EJW from liabilities that might arise out of the performance of the work under this contract by the Dr. EJW, its agents, representatives, employees or subcontractors, and Dr. EJW is free to purchase additional insurance.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The City of Lakewood, its departments, agencies, boards, commissions, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by Dr. EJW, even if those limits of liability are in excess of those required by this Contract.
2. Dr. EJW's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Dr. EJW shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after sixty (60) days prior written notice has been given to the City of Lakewood. Such notice shall be sent directly to **(City of Lakewood, Joseph J. Beno, Director of Public Works, 12650 Detroit Avenue, Lakewood, Ohio 44107)** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the City of Lakewood with an "A.M. Best" rating of not less than A-VII. The City of Lakewood in no way warrants that the above-required minimum insurer rating is sufficient to protect Dr. EJW from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Dr. EJW shall furnish the City of Lakewood with certificates of insurance (ACORD form or equivalent approved by the City of Lakewood) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the City of Lakewood before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(City of Lakewood, Kim E. Smith, Purchasing Manager, Department of Finance, 12650 Detroit Avenue, Lakewood, Ohio 44107)**. The City of Lakewood project/contract number and project description shall be noted on the certificate of insurance. The City of Lakewood reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Dr. EJWs' certificate(s) shall include all subcontractors as insureds under its policies **or** Dr. EJW shall furnish to the City of Lakewood separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. **EXCEPTIONS:** In the event Dr. EJW or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If Dr. EJW or sub-contractor(s) is/are a City of Lakewood agency, board, commission, none of the above shall apply.

Section 6. INDEPENDENT CONTRACTOR

Dr. EJW shall be and remain an independent contractor with respect to all services performed hereunder, and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions or annuities, now or hereafter imposed under any State or Federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Dr. EJW on work performed under the terms of this contract, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said Dr. EJW agrees to indemnify and save harmless the City from any such contribution or taxes or liability therefor.

Section 7. EQUAL EMPLOYMENT OPPORTUNITY AND COMPLIANCE WITH LAWS

Dr. EJW agrees to adopt and maintain a policy of non-discrimination in employment. It further agrees that it will comply with all applicable Federal and State laws with regard to Equal Employment

Opportunity and Fair Employment Practices, with the City's Equal Employment Opportunity Policy, Guidelines and Procedures and with all other applicable Federal, State and local laws.

Section 8. INDEMNIFICATION

Dr. EJW shall indemnify, defend, save and hold harmless the City of Lakewood, its departments, agencies, boards, commissions, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Dr. EJW or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Dr. EJW to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Dr. EJW from and against any and all claims. It is agreed that Dr. EJW will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, Dr. EJW agrees to waive all rights of subrogation against the City of Lakewood, its officers, officials, agents and employees for losses arising from the work performed by the Dr. EJW for the City of Lakewood.

Section 9. SUBCONTRACTORS

Since this contract is made pursuant to the proposal submitted by Dr. EJW and in reliance upon Dr. EJW's qualifications and responsibility, Dr. EJW shall not sublet nor shall any subcontractor commence performance of any part of the services except as specifically included in this contract without

prior written consent of the City. In making the application for subletting any portion of the services, Dr. EJW shall state in writing the portion of the services which each subcontractor is to do or the material which it is to furnish, his place of business, and such other information as may be required by the City. Subletting, if permitted, shall not relieve Dr. EJW of any of its obligations under this contract. All subcontractors for services covered by this contract must conform to the requirements of this contract.

Section 10. ASSIGNMENT OF CONTRACT

The City and Dr. EJW bind themselves and their successors, administrators and assigns to the other party of this contract and to the successors, administrators and assigns of the other party of this contract, in respect to all covenants of this contract. Except as stated above, neither the City nor Dr. EJW shall assign, sublet or transfer its interest in this contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

Section 11. INTERPRETATION OF TERMS

All terms and words used in this contract, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this contract or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender. Dr. EJW agrees that no presentations or warranties of any type shall be binding upon the City, unless expressly authorized in writing herein. In the case of any conflict between the Dr. EJW Scope of Services (Exhibit C) and the City's Request for Proposal (Exhibit D), the provisions of Exhibit D shall govern, except as may be specifically modified herein. The headlines of sections and paragraphs, if any, to the extent used herein are used for reference only, and in no way define, limit or transcribe the scope or intent of any provision hereof. This contract may be executed in any number of counterparts, each of

which, when so executed and delivered in any number of counterparts, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

Section 12. CONSTRUCTION MEANS AND METHODS

Dr. EJW shall not be responsible for the means, methods or scheduling of construction or for construction safety. If the scope of services for Dr. EJW does not include administration of the construction contract, Dr. EJW shall not be liable or responsible for those field problems that Dr. EJW could have observed had it administered to the construction contract.

Section 13. HAZARDOUS SUBSTANCES

Dr. EJW assumes no responsibility or liability relating to any hazardous substance on the project site including its existence, removal, transportation, or disposal. City warrants that if it knows of any reason to assume or suspect that hazardous substances including asbestos, fungi or mold may exist at the site of the project, City has informed Dr. EJW. City at its cost shall be responsible for analysis, design, removal, remediation or other action related to any asbestos, fungi, mold or hazardous substances.

Section 14. THIRD-PARTY BENEFICIARIES

This Contract is intended solely for the benefit of the parties hereto. Nothing herein expressed or implied is intended to or shall be construed to confer upon, give or create in any person or entity other than the parties hereto any right, duty, benefit, interest, remedy, standard of care or cause of action.

Section 15. EXHIBITS

It is mutually understood and agreed that all exhibits attached hereto are made a part hereof as if fully written herein. In the case of any conflict or variance between the terms of this contract and the terms of Dr. EJW Scope of Services, the terms of this contract shall govern.

The following Exhibits attached hereto are hereby incorporated with and made a part of this contract:

- a. Exhibit A: Ordinance No. 49-17A
- b. Exhibit B: Board of Control authorization, Dated November 6, 2018
- c. Exhibit C: Dr. EJW Proposal, Dated November 1, 2018
- d. *NO* - Exhibit D: City's Request for Proposal, Dated *Verbal*
- e. Exhibit E: Insurance Requirements Check List

EXHIBIT A

ORDINANCE NO. 49-17A

Anderson, Bullock, George, Litten
BY: O'Leary, O'Malley, Rader

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five (5) members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, amending Ordinance No. 49-17A, adopted December 18, 2017 authorizing and directing the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager to advertise for bid and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood for the Wastewater System and Treatment Improvement Program in accordance with the Administrative Code of the City of Lakewood, contracts not to exceed the specified amounts shown without separate resolution of Council.

WHEREAS, this Council by a vote of at least five (5) of its members determines that this ordinance is an emergency measure, and that this ordinance shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of municipal departments in that certain capital improvements projects are to be undertaken prior to December 31, 2018 in accordance with the Capital Improvement Plan for fiscal year 2018; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. That Ordinance No. 49-17, adopted December 18, 2017, currently reading as follows:

Section 1. That the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager is hereby authorized and directed to engage architectural and/or engineering firms to provide professional services for the design, preparation of specifications, construction inspection, contract administration and to advertise for bids and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood, for the following Infrastructure Improvements, contracts not to exceed the specified amounts shown, except as hereinafter provided:

Wastewater System and Treatment Improvement Program	\$11,500,000
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is hereby amended to read as follows:

Section 1. That the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager is hereby authorized and

directed to engage architectural and/or engineering firms to provide professional services for the design, preparation of specifications, construction inspection, contract administration and to advertise for bids and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood, for the following Infrastructure Improvements, contracts not to exceed the specified amounts shown, except as hereinafter provided:

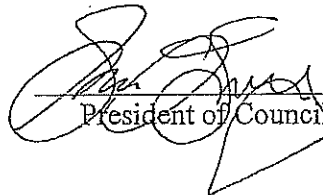
Wastewater System and Treatment Improvement Program

\$26,500,000

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 3. This This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble, and provided it receives the affirmative vote of at least five (5) members of Council, this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor otherwise, it shall take effect and be in force after the earliest period allowed by law.

Adopted: 11/5/18

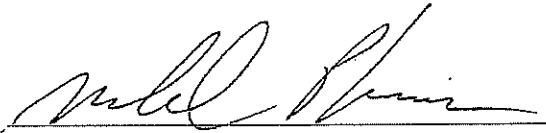


President of Council



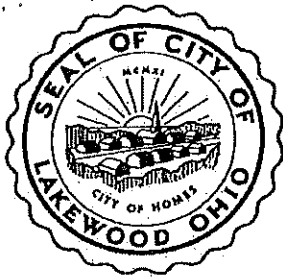
Clerk of Council

Approved: November 6 2018



Mayor

EXHIBIT B



12650 DETROIT AVENUE ■ 44107 ■ 216-529-6075 ■ 216-529-6806

Reference No. BC-18-258

November 6, 2018

Board of Control
City of Lakewood, Ohio 44107

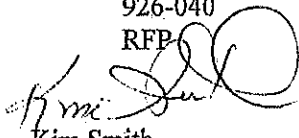
**Subject: Award Contract – Vibration Monitoring Services – Re: High Rate Treatment Facility –
Waste Water Treatment Plant Improvements Project**

Dear Members of the Board:

Based on a review conducted by the Division of Purchasing in conjunction with the Department of Public Works, Division of Engineering, and the attached letter of recommendation, I am submitting for your consideration this request to award a contract to Dr. Edward J. Walter & Associates, Inc. in the amount of \$42,400 to perform Vibration Monitoring Services during construction of the new High Rate Treatment Plant (HRT) as part of the Waste Water Treatment Plant Improvements Project.

Dr. Edward J. Walter & Associates, Inc. was chosen to perform Vibration Monitoring Services based on RFP submission for the services.

Contracting Authority:	Ordinance 49-17A \$26,500,000
Contracting Balance:	\$606,309 / \$563,909
Funding:	Waste Water Treatment Fund
Account Distribution:	511-3072-432-82-30 Project #189005 \$23,000,000
Account Balance:	\$145,899 / \$103,499
Contract Approved by Law:	Yes _____ / No _____ / PO _____ / c/c _____
Object Code:	High Rate Treatment Plant
Commodity Code:	926-040
Bid Reference:	RFP _____


Kim Smith
Purchasing Manager

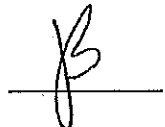


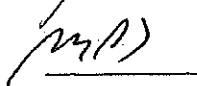
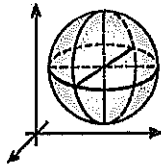
	<u>Approved</u>	<u>Disapproved</u>	<u>Date</u>
Joseph J. Beno PE, Director Public Director		_____	11/6/18
Kevin M. Butler, Director of Law		_____	11/6/18
Jennifer Pae, Director of Finance		_____	11/6/18
Michael P. Summers, Mayor		_____	11/6/18



EXHIBIT C



Dr. Edward J. Walter & Associates, Inc.
Vibration and Sound Consultants

Quotation for Services

DATE: November 1, 2018
FROM: Kyle Varner

VIBRATION MONITORING

Should vibration monitoring be required the following pricing would apply. Our seismographs can be downloaded remotely using cellular modems. They can also be programmed to provide alerts if pre-set vibration trigger levels are reached. This service along with onboard charging system, and security box is included in our Monthly Seismograph Rental price.

Monthly Seismograph Rental (3)	\$1800.00 / month \$600.00 Each
Report Preparation / Office time (as needed, one hour per week typical)	\$90.00 / hour
Installation / Removal / Relocation (half day typical)	\$350.00 / half day \$650.00 / full day
Onsite Monitoring (if required)	
Onsite Representative with up to 4 Instruments	\$350.00 / half day \$650.00 / full day

Thank you for your consideration. Please do not hesitate to contact us if you have any questions or require additional information.

Respectfully,

Kyle Varner
Field Services Manager

EXHIBIT E

Exhibit E

INSURANCE REQUIREMENTS CHECKLIST
General

Items marked "X" must be provided.

COVERAGE REQUIRED

MINIMUM LIMITS REQUIRED

<u> X </u> GENERAL LIABILITY (The following coverage must be included)	\$ <u>1,000,000</u> Per Occurrence
Premises-Operations	\$ <u>2,000,000</u> General Aggregate
Independent Contractors/Subs	Collapse (C)
Broad Form Contractual	Underground (U)
Broad Form Property Damage	Personal & Advertising Injury
Blanket Contractual Liability	Products-Completed Operations
-Written and Oral	Fire Legal Liability
Explosion (X)	Employer's liability (Ohio Stop Gap)
<u> X </u> UMBRELLA LIABILITY Extending over all Liability Programs	\$ <u>5,000,000</u>
<u> X </u> AUTOMOBILE LIABILITY Owned, Hired, and Non-Owned Employee Non-Ownership	\$ <u>1,000,000</u> Per Occurrence
<u> X </u> WORKERS' COMPENSATION <u> X </u> Workers' Compensation coverage in compliance with the Statutory laws of the State of Ohio	
<u> </u> PROFESSIONAL LIABILITY	\$ <u> </u>
<u> </u> BUILDER'S RISK	<u> </u> 100% Completed Value
<u> </u> INSTALLATION FLOATER	<u> </u> 100% Installed Replacement Value
<u> </u> FLOOD INSURANCE	<u> </u> 100% Completed Value or Maximum of Flood Program
<u> </u> ENVIRONMENTAL IMPAIRMENT LIABILITY	\$ <u> </u>
<u> </u> EMPLOYMENT PRACTICES LIABILITY	\$ <u> </u>

The certificate of insurance must show the "City of Lakewood" as a named additional insured & give sixty (60) days prior written notice of cancellation, non-renewal, or adverse change to the City of Lakewood.

Statement of Bidder and Insurance Agent

We understand the requirements requested and agree to fully comply.

Bidder

Insurance Agency

Authorized Signature


Authorized Signature

IN WITNESS WHEREOF, the parties hereunto have caused this Contract to be executed and to become effective on the day and year first above written.

Witness:

CITY OF LAKEWOOD, OHIO

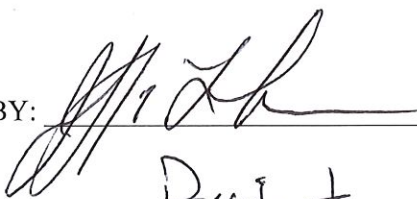

As to City of Lakewood

BY: 
Director of Public Works

Witness:

Dr. Edward J. Walter & Associates, Inc.

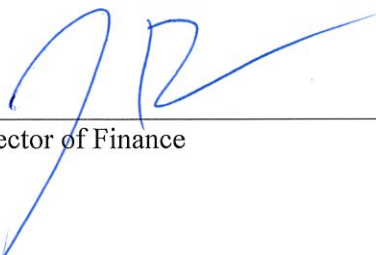

As to Consultant

BY: 
TITLE: President

Approved as to form:

Funds are available:


Director of Law


Director of Finance